
Full Council

29 October 2020

Report of the Monitoring Officer

Chief Operating Officer Selection and Approval

Summary

1. This report provides Full Council with the recommendation from the Chief Officer Appointments Sub Committee, with the detail of the selection process and proposed appointment of the Chief Operating Officer and Head of Paid Service. The Chief Operating Officer will also act as the Returning Officer.
2. Section 4D of the constitution states “Full Council will approve the appointment of the Head of Paid Service following a recommendation made by the Chief Officer Appointments Sub Committee”.

Background

Chief Operating Officer Model

3. At the Staffing Matters and Urgency (SMU) Meeting on 24 August 2020, the committee agreed to progress with the Chief Operating Officer model, following options presented by the Local Government Association.
4. It was agreed by SMU during that meeting that once the structure was agreed, the implementation would be carried out in accordance with the council’s change management processes.
5. From the LGA report the COO model creates a stand-alone senior role designated as Head of Paid Service (HoPS) and responsible for the line management of other senior managers and directors. The role has a greater focus on operational delivery and service

coordination as opposed to strategic management or the ambassadorial role often undertaken by the typical chief executive role.

6. Within CYC context the active involvement and strategic direction of the Executive body and the collegiate way in which the Executive and Corporate Directors work would enable this model to work within CYC.
7. It would be agreed to map the COO role to a salary band as the first four points of the Chief Executive salary band. Therefore, over time an additional saving to the authority as progression is capped at four spinal points.

Job Titles	Level	Salary April 20
Chief Executive	7	£158,123
	6	£154,034
	5	£151,989
	4	£149,944
	3	£147,899
	2	£145,855
	1	£141,765
Chief Operating Officer	4	£149,944
	3	£147,899
	2	£145,855
	1	£141,765
Corporate Directors	4	£112,067
	3	£108,473
	2	£105,015
	1	£101,661

Restructure Process

8. Following the decision by SMU based on the paper provided in August, the post of Chief Executive and Corporate Director of Customer and Corporate Services roles would be deleted. In its place would be a Chief Operating Officer with Head of Paid Service responsibilities.

9. The Chief Executive took early retirement on the grounds of efficiency in March 2020, in advance of this restructure, but with the commitment to save at least £81k.
10. This therefore left the Corporate Director of Customer and Corporate Services post holder within scope and at risk of redundancy. This post was deleted within the Chief Operating Officer model.
11. The council is obliged where possible to take steps to avoid any compulsory redundancies. (The Employment Rights Act 1996 which commences the concept of offering alternative employment as a way to mitigate against redundancy. Since this act there has been case law, regulations and ACAS guidance which are now the working principles of an employer needing to take steps to avoid redundancy).
12. Part of the councils change management process therefore is to consider staff in scope and compare their substantive post to any new roles within the structure. This process is carried out through an assimilation panel.
13. This assimilation panel met, Chaired by Head of HR (Leading the restructure on behalf of SMU), Amanda Hatton as a Chief Officer and a HR Adviser. The panel was observed by GMB lead convenor.
14. The panel considered the deleted post of Corporate Director Customer and Corporate Services (CD CCS) and the new Chief Operating Officer Post. It agreed that the CD CCS post assimilated at stage 2.
15. As a result of the HR processes and in line with ACAS guidance and legislation to mitigate redundancy, Ian Floyd was identified as assimilating at stage 2.
16. In normal circumstances this paper exercise is sufficient and the individual would move into the new post at an agreed date. However as the Chief Operating Officer is the Head of Paid

Service for the council, and as such full council must approve the appointment, SMU felt it was appropriate to test, through an interview process, the individuals suitability against the new role.

17. This additional step, outside of the change management process, was to provide additional assurance over and above a paper exercise and allows members to be involved.
18. The individual and trade unions agreed with this additional step as an exception to the process, due to the level of role.
19. Following SMU, the following members were nominated to be part of the appointments sub-committee. Cllr Nigel Ayre, Cllr Denise Craghill, Cllr Danny Myers and Cllr Paula Widdowson.
20. The appointment sub-committee was advised of the one internal applicant, Ian Floyd, to be interviewed.
21. Following that notification, Labour Leader Cllr Myers withdrew from the process. *“The confirmation of a single internal candidate means that I (and the Labour Group) cannot participate in the appointments process for Chief Operating Officer. I have stated at every opportunity the need to have a recruitment process that includes external and internal for this position; and therefore I cannot join the panel this week.”*
22. Discussion took place with the appointments sub-committee and Chair of SMU. It was agreed to progress with the interview as planned, however to seek agreement from GMB and Unison to provide a representative to observe the appointment panel.
23. Both GMB and Unison agreed to participate, they were provided the necessary documentation including the interview questions and were invited to observe from the start of the panel pre meet, through the interview and during the panel discussion.
24. A statement from both trade union representatives can be found in the consultation section.

25. The interview was held on Thursday 1 October 2020. This consisted of a presentation by the candidate and interview questions asked by all panel members.
26. The panel recommend the appointment of Ian Floyd. Following discussion they concluded *“Highly suitable, with significant strengths and appointable to the position of COO.”*
27. The trade unions representatives agreed with this conclusion. Please refer to their statements in the consultation section.
28. In line with the constitution Executive members have been notified. Ian Floyd will be offered the permanent post at £145,855 per annum. This is point two of the incremental pay scale for COO, taking into consideration the 14 months he has been the Interim Head of Paid Service, as agreed by SMU. This starting salary at point two is normal practice where the person has been in a similar post for over 12 months.

Consultation

29. Formal consultation with staff affected followed the councils change management process.
30. The trade unions were involved at all stages of the process.
31. Unison provided the following *“UNISON welcomed the opportunity to observe the member panel interview. I’d like to echo what Mandy [GMB] has said below. The additional layer of a member interview panel has added confidence to the paper assimilation exercise and the council have followed our processes with care and diligence.”*
32. GMB provided the following *“GMB are grateful for the opportunity of observing the internal processes to mitigate the need for redundancies as a result of the deletion of 2 Corporate Chief Officer roles and the formation of the COO role.”*

I on behalf of GMB feel confident that due correct processes have been followed in the identification of those at risk, and their assimilation on paper into a vacant post, again to mitigate the need for a redundancy. The continuation of that paper exercise through to an interview with the member panel was also conducted in a manner expected to assess suitability for the COO role. I observed a professionally conducted interview panel that ensured the candidate had the ability to present their vision of the role and answered questions and subsequent questions in relation to how they will fulfil the position of COO.

I feel confident that the confirmation of the suitability of the candidate has been undertaken in accord with the processes that City of York Council implement when filling roles after a restructure.”

Financial Parameters

33. The financial parameters remain unchanged, the report in June 2020 identified the requirement for any structure to save £81k per annum.
34. The savings will offset the cost for the early retirement that was agreed (five year pension strain paid to the NY pension fund) and the additional savings required to be delivered from the previous structure agreed in December 2018.
35. The COO model delivers a saving of circa £95k, which is above the required £81k per annum. The additional savings to be then considered by the Head of Paid Service in the review of Corporate Management Team restructure.

Options

36. There are two options for Full Council to consider, namely to approve the appointment of Ian Floyd, or not to approve.

Option 1: Approve the appointment

37. Evidence has been provided within the paper to give assurances of a thorough process, following appropriate HR policies and legal

guidance.

38. The Chief Officer Appointments Sub Committee is recommending the appointment of Ian Floyd
39. The council has demonstrated its ability to mitigate compulsory redundancy.
40. Through this proposal the financial parameter set have been achieved and savings for the next 5 years are achievable.

Option 2: Do Not Approve

41. Full council has the option not to approve the appointment of Ian Floyd.
42. Based on the evidence provided there is no legal basis on which to not appoint given the current internal HR processes, policies and constitution.
43. To not approve at this stage would leave the council at risk of a legal challenge by failing to mitigate a compulsory redundancy, and may expose the Council to potential governance risks as a result of the refusal to appoint to the Head of Paid Service role despite receiving a positive recommendation from the Chief Officer Appointments Sub Committee.

Council Plan

44. The implementation of the Chief Operating Officer model and thus a permanent Head of Paid Service, will contribute to delivering the Council Plan and its priorities, enabling the Council to remain proactive and fit for purpose for the future.

Implications

Financial

45. This recommendation implements the Chief Operating Officer Model which provides savings greater than the required £81k target in order to meet current budget requirements.

Human Resources (HR)

46. As provided throughout this paper the change management process has been followed. The council has been able to demonstrate they can mitigate compulsory redundancy through its process and the recommendation to appoint Ian Floyd as Chief Operating Officer.
47. The involvement of the trade unions throughout has provided assurances of the process, its fairness and transparency.

Equalities

48. There are no equalities implications at this time, however, the Council needs to have due regards to the public sector equality duty, which will be kept under review.

Legal

49. The Council must ensure that its employment policies and procedures are followed so as to avoid any future legal challenge.
50. The constitution states at Section 4: Rules and Procedure 4D: Appointment and Dismissal of Staff, Section 3.3 states:

“The Appointments Committee must include at least one Member of the Executive.”

51. Therefore even with the non participation of the Labour member, the panel was constituted in line with the constitution. The additional layer of trade union observers gives transparency to the process from independent people.
52. The constitution states at Section 4: Rules and Procedure 4D: Appointment and Dismissal of Staff, Section 3.1

“This Standing Order applies to the appointment of all Chief Officer posts including temporary appointments. It does not apply, however, where it is proposed that the appointment be made exclusively from among the Council’s existing officers.”

53. Given that there is only one internal candidate for consideration for the Head of Paid Service on a permanent basis, the above referenced clause had the effect that the council was not required

to undertake an external recruitment campaign to seek suitable candidates for the role.

54. However given that the Head of Paid Service is the most senior officer employed by the Council and in recognition that this is a statutory post the additional measures as detailed within the report were put in place over and above the legal requirements both in the constitution and the councils change management process.
55. In accordance with the Constitution, the appointment of a Head of Paid Service must be approved by Full Council.
56. There is a legal risk to the council if the appointment is not approved. The council is required to demonstrate they have mitigated compulsory redundancy and have done so through a transparent process, recommending the appointment of a suitable candidate. The non approval would place the individual at risk of compulsory redundancy.
57. The council will be exposed to legal challenge should there be a decision not to approve the appointment. These could include a claim of unfair redundancy selection and / or constructive dismissal. This would result in additional costs to the authority through any claim along with a redundancy payment c£60k. In addition there are potential risks to the overall governance framework for the Council as it is required to have a Head of Paid Service in post. At this present time two of the three statutory officers in post are acting on interim arrangements which is not sustainable on a long term basis.

Crime and Disorder, Information Technology and Property

58. There are no identified implications.

Risk Management

59. This is a key area of the Council and integrated into the members, along with active public involvement. The risk of no appointment will leave the council open to legal challenge.

Abbreviations

CMT – Corporate Management Team

COO - Chief Operating Officer

CYC- City of York Council

FTE - Full time equivalent

HR - Human Resources

LGA – Local Government Association

OD – Organisational Development

SMU – Staffing Matters and Urgency Committee